IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1708

JUAN SANCHEZ LUGO,

Petitioner,

-against-

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL II, EDWARD R. MURPHY, JERRY SCHNEIT, ROWLAND J. SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO, STEPHEN KANTOOSKY, KAREL MRNKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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DECISIONS OF THE COURTS BELOW

The initial decision of the U.S. District Court, E.D.N.Y., which upheld subject matter jurisdiction and found that petitioner stated a claim upon which relief could be granted, is reported at 366 F. Supp. 99. The District Court's decision after trial, which dismissed the complaint, is reported at 388 F. Supp. 997. The decision of the Second Circuit affirming the District Court is reported at 529 F. 2d 251. The February 26, 1976 decisions of the Second Circuit denying rehearing and rehearing in banc are unreported. All of the decisions are reproduced in the appendix.

STATEMENT OF THE GROUNDS OF JURISDICTION

1. The basis for federal jurisdiction

in the District Court is 29 U.S.C. §186(e). The decision of the Court of Appeals affirming the dismissal of this action by the District Court was entered on January 14, 1976. The Court of Appeals' denials without opinion of petitioner's motion for rehearing or rehearing in banc were entered on February 26, 1976.

2. Jurisdiction to review the decision of the Court of Appeals in this case is conferred upon this Court by 28 U.S.C. §1254.

THE QUESTION PRESENTED FOR REVIEW IS AS FOLLOWS:

When a participant in a Taft-Hartley pension plan files a claim for disability pension benefits under that plan, is he entitled to a hearing incorporating any of the elements

of due process on the issue of his disability?

THE STATUTES WHICH THIS CASE INVOLVES ARE AS FOLLOWS:

Taft-Hartley Act §302, 29 U.S.C. §186:

> Restrictions on payments and loans to employee representatives, labor organizations, officers and employees of labor organizations, and to employees or groups or committees of employees:
>
> (c) The provisions of this section shall not be applicable...
>
> (5) With respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, that (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or

death of employees, compensation for injuries or illness resulting from occupational activity of insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial unpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust

fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities

(e) The district courts of the United States and the United States courts of the territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-115 of this title.

STATEMENT OF THE CASE

A. Course of proceedings in the case before the Court.

Petitioner Juan Sanchez Lugo filed the complaint in this action on May 11, 1973, in the United States District Court for the

Eastern District of New York, alleging violations by respondents* of §302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5). The case was, at that time, assigned to the Honorable John R. Bartels, U.S.D.J., for all purposes. The complaint presented two basic claims for adjudication: (1) that the procedure used by the respondent retirement fund and trustees to determine eligibility for disability pensions violates §302(c)(5) of the Taft-Hartley Act since it does not afford a claimant a hearing which incorporates the minimum requirements of fundamental fairness and thus

*The respondent Employees Retirement Fund is a Taft-Hartley Act pension plan and as such is required to conform to the requirements of §302(c)(5) of that Act, 29 U.S.C. §186(c)(5). The remaining respondents are the Assistant Executive Secretary of the Fund and its trustees, an equal number of which are appointed by the employers and the union as required by §302(c)(5).

does not permit the pension plan to operate for "the sole and exclusive benefit of the employees" as required by that section; and (2) that the requirement that applicants for retirement pensions must have worked 90 months within the 10 years immediately preceding application (the 90/10 Rule) for such pensions arbitrarily and unreasonably excludes employees from the benefits of the pension fund, and is thus also violative of the "sole and exclusive benefit" requirement of §302(c)(5) of the Taft-Hartley Act.* Petitioner sought declaratory and injunctive relief to establish his rights under the Act.

Respondents moved to dismiss the complaint pursuant to Rules 12(b)(1) and (6)

*While this claim was pursued in the Second Circuit, it has been eliminated for the purposes of this petition and, therefore, will not be discussed further.

of the Federal Rules of Civil Procedure, on the grounds that the Court had no jurisdiction over the claims, and that the petitioner had failed to state a claim upon which relief could be granted, and, pursuant to Rules 12(b)(6) and 56, F.R.C.P., for summary judgment. The District Court, per Bartels, J., denied respondents' motion in all respects on October 11, 1973. 366 F.Supp. 99 (E.D.N.Y. 1973) (A-1).*

Respondents then submitted their answer in October, 1973, denying petitioner's claims. After discovery, cross-motions for summary judgment were heard by Judge Bartels in June, 1974, and denied from the bench without written opinion.

A trial of the issues as set forth in

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*All such references throughout this petition are to the appendix submitted herewith.

a pre-trial order was held on October 21, 1974. After trial, Judge Bartels held that the written requirement of the pension plan that the trustees act in good faith adequately protects applicants from disloyalty of the officials, and thus the failure to provide for a hearing is not a structural defect in the plan. 388 F.Supp. 997 (A-13).

A notice of appeal to the United States Court of Appeals for the Second Circuit was filed on February 14, 1975. In its decision of January 14, 1976, 529 F.2d 251 (A-27), the Second Circuit affirmed the lower court's dismissal of the complaint. In so doing, the Court refused to set procedural standards to be met in the determination of disability claims in the absence of a showing by petitioner that more formal and elaborate procedures might produce a different result.

Petitioner petitioned the Second Circuit for rehearing or rehearing in banc on the issue of petitioner's right to a hearing with respect to his disability claim. The Second Circuit denied the petition on February 26, 1976, without opinion (A-52 - A-55).

This petition for certiorari is filed only with respect to the issue of petitioner's claim of a right to a hearing incorporating fundamentally fair procedures for determination of the issue of his disability.

B. Relevant Facts Concerning the Suit.

All relevant facts concerning this matter have been incorporated in the petition.

REASONS FOR ALLOWANCE OF THE WRIT

Petitioner, Juan Sanchez, Lugo, was

a member of the International Brotherhood of Electrical Workers and a participant in its pension plan - the respondent Employees Retirement Fund of the Illumination Products Industry - a plan established pursuant to §302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5).

It has been estimated that 35 million workers are presently covered by some form of retirement plan other than Social Security.* In 1974, more than $130 billion was held by private pension plans.** A large percentage of both these workers and money are concentrated in Taft-Hartley pension plans.

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*Hearings on S. 4 and S. 75 before the Subcommittee on Labor of the Senate Comm. on Labor and Public Welfare, 53d Cong., 1st Sess., 174 (1973).

**See CCH Pension Plan Guide No. 328, at 5-6 (Nov. 22, 1974).

The Congressional sponsors of Section 302(c)(5) desired that pension plan trustees be subject to a standard of "strict accountability" and that benefits not be subject to "arbitrary dispensation." Sen. Rep. No. 105 on S. 1126, 93d Cong.

Thus in accordance with the statutory language of Section 302(c)(5) and the Congressional intent behind it, and in recognition of the large number of workers which such plans cover in this country, it has been recognized that a participant of such a plan must be accorded certain fundamentally fair procedures when his claim for benefits is under consideration. Sturgill v. Lewis, 372 F.2d 400 (D.C. Cir. 1966). Sturgill states that a participant is entitled to a due process hearing upon his application for benefits. Such a hearing is distinctly appropriate both in light

of the importance of a pension to an individual participant and in view of the need to assure that plans, which control such huge assets, do not arbitrarily deny benefits.

Yet, the United States Court of Appeals for the Second Circuit, in its decision in this case, 529 F.2d 251 (2nd Cir., 1976) (A-27), has held exactly the opposite. This decision evidences a misunderstanding of the nature and operation of Taft-Hartley pension plans. And, considering the importance of this issue and its application to so large a number of persons in the American work force, a resolution of this conflict in the Circuits is needed immediately.

a. A participant in a Taft-Hartley Pension Plan who has filed a claim for disability pension benefits under that plan is entitled to a hearing incorporating the elements of due process on the issue of his disability.

Pursuant to §305(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5), pension plans may be established in accordance with the requirements of that section. Thus, any such plan must be "for the sole and exclusive benefit of the employees" who are participants in the plan. 29 U.S.C. §186(c)(5). The primary purpose of Taft-Hartley pension plans is to provide benefits to employees whose labor has contributed to the growth of the plan. Pete v. U.M.W., 517 F.2d 1275 (D.C. Cir., en banc, 1975). Federal courts have uniformly held that the "sole and exclusive benefit" requirement prohibits plans from

implementing pension eligibility requirements which arbitrarily or unreasonably prevent participants from securing benefits. Roark v. Lewis, 401 F.2d 425 (D.C. Cir. 1969); Insley v. Joyce, 330 F.Supp. 1228 (N.D. Ill. 1971); Lee v. Nesbitt, 453 F.2d 1309 (9th Cir. 1971). An eligibility requirement which does arbitrarily or unreasonably exclude participants from attaining benefits is said to be a structural defect in the pension plan and must be struck down. Id.

Logically, the sole and exclusive benefit provision also requires that pension plans adopt reasonable procedures for evaluating claims for benefits in order to avoid arbitrary results.

> A failure of the Board of Trustees* to administer the trust** in a manner...[consistent with]...fundamental due process is in substance tantamount to a basic structural defect in the trust. As a practical matter, whether the unjust exclusion of a pensioner is obtained from the exclusive provisions of the trust fund itself or from the arbitrary and exclusionary implementation procedures of the trustees, the ultimate effect is that the trust is not operated for the 'sole and exclusive benefit of the employees.' Burroughs v. Board of Trustees of the Pension Trust Fund for Operating Engineers, et al., 398 F. Supp. 168, 175 (N.D. Cal., 1975).

In order to avoid arbitrary denials of pension benefits, reasonable procedures must exist for the determination of an individual's eligibility for a pension. Such

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*All Taft-Hartley pension plans are required to be managed by a board of trustees composed of an equal number of employer representatives and employee representatives. 29 U.S.C. §186(c)(5).

**All payments to a Taft-Hartley pension plan are required to be held in trust. Id.

procedures must be designed to bring to light all evidence which bears on the issue of eligibility. If eligibility determinations are based on perfunctory procedures which do not guarantee that the merits of a claim are fully reviewed, eligible employees will inevitably be denied benefits to which they are entitled.

The standards for procedures for the review of pension claims has been meticulously set forth by the District of Columbia Court of Appeals in an opinion which is at odds with the decision of the Second Circuit in this case (A-27). In Sturgill v. Lewis, supra, the Court held:

> Since the Trustees perform their functions as such pursuant to an Act of Congress in an area of social concern and importance...the proceedings before the Trustees should conform to at least elemental requirements of fairness, which requirements in these circumstances normally include, in addition to notice, a hearing at which

> the applicant is confronted by the evidence against him, an opportunity to present evidence on his own behalf, articulated findings and conclusions having a substantial basis in the evidence as a whole, and a reviewable record. 372 F. 2d at 401.

The collective bargaining agreement under which the respondent retirement fund is established provides no such procedures. Rather it merely provides that:

> The Committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the Committee, the Union, or the Employers.

The standard for eligibility for a disability pension from the respondent retirement fund requires that an applicant have worked 90 months out of the 10 years immediately preceding the filing of an application and be disabled to the extent that he is unable to work in the industry or in any other job. It

was shown at trial that petitioner in this case suffers from diabetes and a related visual ailment. His work in the Illumination Products Industry as a metal cutter required precision and involved the risk of harm to plaintiff or others in the event of dizziness or inability to focus on the work. Petitioner felt that he could no longer safely perform his job, and applied for disability benefits on April 14, 1972. The board did not meet on petitioner's claim until September 17, 1972. At that session, following its practice and regulations, the board considered only the written report of the committee-appointed physician who is in the employ of the respondents; two letters from petitioner's private physician; and petitioner's earnings history. These reports were read to the board. Petitioner was not given notice of the meeting. No witnesses were

present to be questioned by the board as to the basis or meaning of the medical findings. Petitioner was not present and did not have the opportunity to review the medical report of the committee-appointed physician, cross-examine witnesses, or present rebuttal witnesses. Nor could petitioner testify as to his condition. No vocational expert testified as to petitioner's qualifications for employment in other industries. The record of the board's decision consists of the following notation: "Denied - Not eligible." The basis of that decision is not recorded and, according to the provisions of the plan as set forth above, petitioner has no right to appeal. The respondents admitted at trial that none of the persons who made the decision denying petitioner disability benefits was a medical expert. Thus, the procedure used by respondents

for determining disability pension claims simply does not meet any of the specific procedural standards set forth in Sturgill, supra, at 401.*

On consideration of this issue after trial, the District Court determined that:

> [t]he absence of a provision for a hearing on plaintiff's application for disability benefits does not constitute a structural defect converting the Fund into one not "for the sole and exclusive benefit of the employees." In this respect the employees are protected from possible disloyalty of the officials administering the Fund by the "good faith" requirement of Paragraph 5 of the Agreement** which

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*Perhaps as a result, the number of disability pensions granted under the plan has been minimal: during all of 1970, only two disability pensions were awarded, none to a worker under 55 years of age. As of April 30, 1970, only 50 persons were receiving disability pensions and of those, 35 were 55 years of age or older.

**Paragraph 5 of the collective bargaining agreement which established the plan states:

> The determination in good faith by the Committee (the Committee makes eligibility determinations) of any matter or question under this Agreement shall be final and conclusive. (Parenthetical remark supplied.)

> requires the committee to make a bona fide determination of disability and to administer the Fund for the sole and exclusive benefit of the employees. 388 F. Supp. 997, 1002 (E.D.N.Y., 1975) (A-24).

This decision not only fails to require the respondent retirement fund to adhere to any reasonable procedural standards whatsoever, but it also flies in the face of the District Court's own earlier opinion where, in citing the detailed procedural standards required by Sturgill, the Court states:

> a trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude potential employee-beneficiaries has a structural defect in that it fails to satisfy the requirement that the fund shall be for the sole and exclusive benefit of the employees. 366 F. Supp. 99, 103 (E.D.N.Y., 1973) (A-11).

While the respondent retirement fund requires the respondent trustees to act in

good faith,* it is apparent that contrary to the holding of the District Court, this requirement is insufficient to ensure that the respondent retirement fund be for the sole and exclusive benefit of the employees. Good faith on the part of the trustees merely requires that they fulfill their duties under the pension plan as written and not act unreasonably. If the respondent retirement fund as written is structurally violative of the Taft-Hartley Act because it fails to incorporate fair procedures for the determination of claims,** the good faith requirement

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*The good faith provision of Paragraph 5 of the collective bargaining agreement affords no additional protection to the employees since it merely requires the trustees to fulfill a duty which is imposed upon them both by the Taft-Hartley Act and by common law.

**In this regard, it is instructive to

that the trustees simply carry out the duties imposed upon them by the respondent retirement fund does not cure this defect.

While the District Court ruled that the previously quoted "good faith" provision disposed of the necessity for a hearing on the issue of disability, the Second Circuit

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(footnote continued)
note that paragraph 20(a) of the Collective Bargaining Agreement pursuant to which the defendant fund was established states:

> The Committee shall adopt application forms and every applicant shall be required to answer accurately and completely all questions on such forms. The Committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the Committee, the Union, the Employer or the Employers. (emphasis supplied)

This provision which serves to insulate the trustees' decisions from review is further evidence of the deficiency of the structure of the respondent retirement fund's review procedures.

affirmed this ruling on somewhat altered grounds. Their ruling was based on a number of factors: (1) the inadequacy of petitioner's proof of disability upon his application for benefits; (2) at the trial before the District Court, the petitioner offered no further medical evidence nor "did he indicate what evidence he might offer at a further hearing by the Fund;" and, (3) "at no time had plaintiff requested a personal appearance before the trustees considering his disability." 529 F. 2d at 256 (A-39 - A-40). As such, the Court concluded that:

> There has been no showing that more formal and elaborate procedures might have brought about a different result. At least when an applicant's claim of disability is this weak, reliance on written medical reports could not be a violation of Section 302(c)(5)." Id.

The opinion of the Second Circuit

ignores certain of the prior proceedings in this case and also evidences a fundamental misunderstanding of the claims procedures of Taft-Hartley pension plans. First, the fact that petitioner offered no further medical evidence at trial is of no moment because the District Court, during opening remarks at trial, had specifically ruled that petitioner's physical condition was not at issue (A-47 - A-51). The Court held at that time that the issue to be determined was whether or not a participant in a Taft-Hartley pension plan who has applied for a disability pension has the right to a hearing on the issue of disability, regardless of the merits of his claim (A-50 - A-51). Second Circuit's reliance on petitioner's having failed to offer new medical evidence was, therefore, totally unjustified since no such evidence would have been

admitted.

Second, the testimony at trial proved that respondents had no procedure for providing personal appearances by claimants. Neither were claimants advised that they might request such an appearance. Thus, petitioner's having failed to request a personal appearance can in no way support a denial of his right to a hearing since such a request would have been futile.

Finally, Second Circuit's reliance on the "weakness" of petitioner's claim is misplaced. This factor serves to bolster petitioner's case for a hearing rather than to detract from it. Upon his application for benefits, petitioner complied with all requests of the respondent retirement fund in order to comply with its procedures.*

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*Petitioner was examined by the respondents' physicians and submitted two letters from his own physician.

However, the requirements for establishing disability were never explained to petitioner.* As trustees, the respondents should have insured that all pertinent evidence was secured and scrutinized.** This they did not do.

The opinion of the Second Circuit inherently gives credence to the District Court's reliance on the good faith of the trustees to protect a claimant's rights, i.e., if the trustees act in accordance with the plan's regulations and the claim remains weak, no hearing is required. Unfortunately, such a result begs the question. First,

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*Petitioner is of Puerto Rican descent and generally unfamiliar with the English language. A Spanish interpreter had to be used at trial.

**As must Administrative Law Judges in Social Security Disability proceedings, the trustees should not act as mere umpires, but should ensure that all favorable evidence is elicited on behalf of the claimant. See, e.g., Rosa v. Weinberger, 381 F.Supp. 377, 381 (E.D.N.Y., 1974).

there is no mechanism by which a claimant may discover if the trustees acted in good faith. Second, rather than allowing pension plans to deny any claim without a hearing merely by saying it is weak, a claimant needs the right to a hearing regardless of the apparent strength of his claim. Otherwise, these decisions will remain too much within the arbitrary discretion of the trustees and sound as well as seemingly insubstantial claims will be unreasonably denied.*

Such a result is in direct conflict with the holding of Sturgill v. Lewis, supra. The standards of fundamental fairness required

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*The percentage reversal rate of denials of Social Security disability claims after hearings is an instructive standard in this regard. See, e.g., defendants' answers to interrogatories, 5/30/74, Martinez v. Weinberger, 73 Civ. 900, E.D.N.Y., Neaher, J.; Matthews v. Eldridge, 44 U.S.L.W. 4224, 4232 (2/24/76).

in Sturgill are part of the federal common law developed under Section 302(e) of the Taft-Hartley Act pursuant to the principle of Lewis v. Benedict Coal, 361 U.S. 459 (1960), and Textile Workers v. Lincoln Mills of Alabama, 353 U.S. 448 (1957). In developing federal common law standards of fundamental fairness, the obvious and appropriate sources of law are the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Without incorporating into Section 302 the specific requirements of either amendment, the policy underlying the amendments should nevertheless be a prime consideration. The fundamental policy is that a person may not be deprived or denied rights or entitlements without objective impartial scrutiny -- the requirement of "due process." "A fundamental requirement

of due process is 'the opportunity to be heard.' Grannis v. Ordean, 234 U.S. 385 394, 34 S. Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner." Armstrong v. Manzo, 380 U.S. 545 (1965). Cf., Mullane v. Central Hanover Bank & Tr. Co., 339 U.S. 306 (1950). See also, Goldberg v. Kelly, 397 U.S. 254 (1970).

Similar use has implicitly been made of Fifth and Fourteenth Amendment guarantees when the federal courts have been called on to determine the fairness and reasonableness of labor arbitration proceedings. Thus, in F.J. Buckner Corp. v. N.L.R.B., 401 F.2d 910 (9th Cir., 1968), cert. denied 393 U.S. 1084, 89 S.Ct. 868, a grievance proceeding was found fatally defective because the employee was not notified of the hearing and therefore

did not appear to press his claim. Id. at 913. That the employee was not represented by an advocate who would fully and adequately defend the employees' position at the nearing in his absence was a further irregularity in the procedure. Id. Cf. Ramsey v. N.L.R.B., 327 F.2d 784 (7th Cir.), cert. denied 377 U.S. 1003, 84 S.Ct. 1938 (1964). In Thompson v. International Association of Machinists, 258 F.Supp. 235 (E.D. Va., 1966), the court held that the arbitration hearing in question had been defective in that: (1) the employee was not notified of the arbitration; (2) the employee was not permitted to testify; and (3) the employee's case was not fully and fairly heard. Id. at 239.

The mandate of Sturgill, supra, and Burroughs, supra, for procedural standards

involving pension claims are consistent with and as important as those set forth by federal courts for arbitration disputes. Notice and a hearing at which the applicant and/or his representative are present are necessary to ensure that no applicant is denied a pension without a full and fair review of his claim.

In all its aspects the decision-making process of the respondent retirement fund violates not only the standard set forth in Sturgill, but in addition it violates any conceivable standard of fair decision making, whatever its source. Surely the Congressional objectives inherent in Section 302 are in no way met by a fund such as the respondent retirement fund which permits its trustees to decide claims based on insubstantial or no evidence, and with untrammeled power and arbitrary discretion in the total absence of

procedural safeguards.

This petition for a writ of certiorari should, therefore, be granted for a number of compelling reasons: (1) the question presented herein is of extreme national importance and has never been decided by this Court; (2) there is a conflict in the circuits concerning the resolution of this issue; and, (3) this Court has always sat to protect the right to fundamental fairness in such situations.

CONCLUSION

For all the foregoing reasons, petitioner Juan Sanchez Lugo prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on February 26, 1976.

Respectfully submitted,

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APPENDIX A

Juan Sanchez LUGO, Plaintiff,
v.
The EMPLOYEES RETIREMENT FUND OF the ILLUMINATION PRODUCTS INDUSTRY et al., Defendants.
No. 73-C-663.

United States District Court,
E. D. New York.
Oct. 12, 1973.

Employee brought suit for declaratory and injunctive relief against employees' retirement fund and the trustees thereof, alleging a violation of the Labor Management Relations Act in denying plaintiff's application for benefits under the fund, and also claiming damages. The District Court, Bartels, J., held that (1) where plaintiff alleged that the trust fund was not "for the sole and exclusive benefit of the employees" by reason of its exclusive eligibility requirements, the court had jurisdiction to determine whether the trust agreement in fact satisfied the pertinent statutory standards, (2) the court, under the penumbra of express statutory mandate, also had jurisdiction over plaintiff's claim which was predicated on a lack of due process procedure by the trustees in determining eligibility of the participants, and (3) plaintiff's allegations set forth a violation of the Labor Management Relations Act and stated a cause of action.

Motion to dismiss complaint denied.

1. Labor Relations ⇐131

If trust agreement, in the first instance, complies with Labor Management Relations Act provision making it unlawful for an employer to make payments to a representative of employees, but with an exception for payments made to a trust fund complying with enumerated requirements, the district court would have no jurisdiction to dictate the terms of the agreement or to adjudicate a violation of the fiduciary obligation of the trustees in the administration of the trust. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

2. Labor Relations ⇐131

Where employee alleged that trust fund was not "for the sole and exclusive benefit of the employees" by reason of its exclusive eligibility requirements, district court had jurisdiction to determine whether the trust agreement in fact satisfied the standards of Labor Management Relations Act exception to the general prohibition against an employer making payments to an employee representative, and the court also had specific authority to restrain any violations of that statutory provision. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

3. Labor Relations ⇐131

An employees' trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude from eligibility certain potential employee-beneficiaries has a structural defect in that it fails to satisfy the Labor Management Relations Act requirement that the fund shall be for the sole and exclusive benefit of all the employees. Labor Management Relations Act, 1947, §§ 302, 302(c)(5) as amended 29 U.S.C.A. §§ 186, 186(c)(5).

4. Labor Relations ⇐131

An employees' trust fund, coming within the Labor Management Relations Act exception to the general prohibition against an employer making payments to an employee representative, does not fit the categories of an ordinary trust and to that extent is sui generis and thus requires compliance with the objectives of the pertinent statutory provision. Labor Management Relations Act, 1947, § 302 as amended 29 U.S.C.A. § 186.

5. Labor Relations ⇐131

Under the penumbra of the express statutory mandate of the Labor Management Relations Act provision making it unlawful for an employer to make payments to an employee representative, but excepting payments made to an employees' trust fund complying with certain requisites, the district court had jurisdiction of employee's challenge, predicated on a lack of due process procedure by the trustees, to the fund's eligibility requirements for a disability pension. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

6. Labor Relations ⇐131

Allegations that provisions in employees' trust fund denied eligibility for retirement and disability benefits for arbitrary reasons to a substantial number of employees, in violation of Labor Management Relations Act provision, stated a cause of action. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

John C. Gray, Jr., New York City, for plaintiff; Douglas J. Kramer, Brooklyn Legal Services Corp., Brooklyn, N. Y., and David S. Preminger, New York City, of counsel; E. Judson Jennings and Jonathan A. Weiss, Legal Services for the Elderly Poor, New York City, of counsel.

Harold Stern, New York City, for defendants; Norman Rothfeld, New York City, of counsel.

BARTELS, District Judge.

Plaintiff brings this action for declaratory and injunctive relief against The Employees Retirement Fund of the Illumination Products Industry (Retirement Fund) and the trustees thereof, alleging a violation by defendants of Section 302 of the Taft-Hartley Act, as amended, 29 U.S.C. § 186 (the Act) in denying plaintiff's application for benefits under the Retirement Fund, and also claiming damages. Jurisdiction is alleged under Section 302(c)(5) and (e) of the Act, as well as under 28 U.S.C. §§ 1331 and 1337.

Defendants move to dismiss the complaint under Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure on the ground that the Court has no jurisdiction of the complaint under Section 302 of the Act, and also that plaintiff has failed to state a claim upon which relief can be granted.

By Section 302 of the Act, Congress intended to prohibit the corruption of union representatives and the extortion of tribute from employers and thus eliminate the influence of side payments. As a part of this statutory scheme the sole control by union officials of trust funds under Section 302(c)(5) was proscribed. Section 302(c)(5) authorized payments to trust funds established "for the sole and exclusive benefit of the employees of such employer . . ." and administered by representatives of employers and employees and neutral per-

sons provided that the trust is for retirement pensions and other benefits for employees including disability insurance. In addition, the detailed basis for payments and operation of the trust was required to be set forth in an agreement between the parties. Paragraph (e) of Section 302 of the Act expressly grants jurisdiction to the district courts [1] to restrain violations of this section. There is no question that the Retirement Fund in this case and its trustees are subject to the provisions of Section 302.

The Retirement Fund provides for two kinds of benefits relevant to plaintiff's position: (1) standard retirement benefits for those who have remained employed or have been available for employment by contributing employers, attain the age of 60 and have 90 months employment in the ten-year period immediately preceding the filing of a participant's application; and (2) disability pension for those who have been employed or available for employment by contributing employers for at least ten years and have an aggregate of 90 months employment for the ten years immediately preceding the filing of a participant's application and who are also permanently disabled to the extent that they can no longer obtain gainful employment in any occupation.

Plaintiff, age 50, a participant in the Fund since 1955 with 195 months of credited employment and a victim of

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1. Section 302(e) of the Act reads in part: "The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, ..."

diabetes, applied for benefits under the disability provision of the Retirement Fund on the ground that he was totally disabled and unable to engage in gainful employment or, in the alternative, for retirement benefits under the standard retirement fund. His application for relief was denied by the trustees as failing to satisfy the eligibility requirements of either of the foregoing provisions.

He attacks the standard retirement provision of the plan claiming it is arbitrary and unreasonable because it (i) excludes him and all others similarly situated who have not reached the age of 60 but who have worked in the industry more than 90 months, while it includes those who had reached the age of 60 and have worked in the industry only 90 months; and (ii) requires employment or availability for employment by contributing employers for 90 months preceding the filing of the application and thus deprives him and others similarly situated who have worked in the industry but who have not been employed for 90 months in the ten-year period immediately preceding the filing of the application, of any credit for prior employment in the industry outside the ten-year period. At the same time plaintiff challenges the eligibility provision of the disability pension on the ground that (i) the requirement that the participant be so permanently disabled that he can no longer secure gainful employment in any industry is arbitrary and unreasonable; and (ii) the procedures established for the determination of disability of the participants so lacked the fundamental requirements of due process, such as a hearing and an opportunity to present medical evidence, as to render them arbitrary and capricious.

I

[1] We are compelled initially to turn to the question of jurisdiction which, in fact, has been the subject of attack in prior similar cases. See, e. g., Insley v. Joyce, 330 F.Supp. 1228 (N.D. Ill.1971). Defendants claim that under the provisions of Section 302(c)(5), requiring the trust fund to be established "for the sole and exclusive benefit of the employees of such employer, and their families and dependents," this Court's jurisdiction is limited to the issue of whether there has been a violation of the basic structure of the trust agreement.[2] They insist that this Court has no jurisdiction to dictate the terms of the trust agreement or to adjudicate a violation of the fiduciary obligation of the trustees in the administration of the trust. With this general statement there can be no disagreement provided the trust agreement, in the first instance, complies with Section 302. Bowers v. Ulpiano Casal, Inc., 393 F.2d 421 (1st Cir. 1968); Insley v. Joyce, *supra*; Giordani v. Hoffmann, 295 F.Supp. 463 (E.D.Pa.1969); Porter v. Teamsters, etc. Funds, 321 F. Supp. 101 (E.D.Pa.1970). The Court in *Bowers, supra,* expressed what this Court believes to be the proper jurisdictional foundation of Section 302. There the Court said:

2. The legislative history of Section 302 throws little light upon the scope of Congressional intent in enacting the section except to make it clear that the objective was to remove the corruptive influence of side payments and to proscribe control of the trust funds by union officials. See Weir v. Chicago Plastering Institute, Inc., 177 F. Supp. 688, 696 (N.D.Ill.1959), reversed, 279 F.2d 92 (7th Cir. 1960); Bowers v. Ulpiano Casal, Inc., 393 F.2d 421, 425 (1st Cir. 1968); Insley v. Joyce, 330 F.Supp. 1228, 1233 (N.D.Ill.1971).

"We are, however, persuaded that the weight of reason and authority compels a narrow reading of section 302(e). In the first place, its language limits federal courts 'to restrain violations of this section'. These violations, if we read correctly, are violations of basic structure, as determined by the Congress, not violations of fiduciary obligations or standards of prudence in the administration of the trust fund." 393 F.2d at 424.

A

This leaves open for determination the crucial issue as to whether, in fact, the trust agreement was for the sole and exclusive benefit of the employees. If the Court finds that the trust agreement is not so structured it, of course, possesses jurisdiction over the claim, but the Court can determine this question only if, in the first instance, it assumes jurisdiction. Wheeldin v. Wheeler, 373 U. S. 647, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963); Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946). A plaintiff who places in issue the exclusionary eligibility requirements of a trust fund places in issue the question whether the fund is a section 302 trust fund. Thus, the District of Columbia Court of Appeals held in 1968 in Roark v. Lewis, 130 U.S.App.D.C. 360, 401 F.2d 425, that the requirement in a trust of employment by the employee by the last signatory coal operator to qualify for eligibility benefits was prima facie unreasonable and required the trustees to come forward with evidence establishing its reasonableness, saying, at p. 429:

"We do say that when such employees are *denied* pensions by a requirement

which would *give* pensions to employees having worked a substantially lesser period of time for contributing employers, the burden is on the trustees to show some rational nexus between the Fund's purpose and the requirement. If such a nexus is shown, the court's scrutiny is at an end. It is for the trustees, not judges, to choose between various reasonable alternatives."

In a similar case, Insley v. Joyce, *supra*, 330 F.Supp. at 1233, it was held:

"A pension plan which excluded a sizeable number of union members, with no reasonable purposes behind their exclusion, may, in fact, fail to be for the sole and exclusive benefit of employees as Congress used that term in its exemption to the general prohibition against payment of moneys from employers to labor representatives."

[2] Plaintiff having alleged that the trust fund is not "for the sole and exclusive benefit of the employees" by reason of its exclusive eligibility requirements, the Court has jurisdiction to determine whether the trust agreement in fact satisfies the statutory standards of Section 302 and, in addition, under Section 302(e) has specific authority to restrain any violations of that section.

B

Jurisdiction over plaintiff's second claim, predicated upon a lack of due process procedures by the trustees in determining eligibility of the participants, raises a more doubtful question. It is not clear from a literal reading of the statute whether such action by the trustees involves the violation of a fiduciary obligation in the administration of the

trust or the authority of the trustees granted in the agreement to administer the trust in a manner so lacking in fundamental fairness that its operation would not be "for the sole and exclusive benefit of the employees." Such conduct if authorized, would in substance be equivalent to a basic structural defect. Referring to such conduct, the Court of Appeals of the District of Columbia in Roark v. Lewis, *supra*, 401 F.2d at 426–427, concluded that the statute:

"explicitly casts authority to create such a fund in trust terms, consequently the scope of court review of trustees' action has been defined as one of determining whether their action was arbitrary or capricious. If it was, then potential beneficiaries of the trust may justly complain that they were entitled to have a higher standard of conduct exercised on their behalf."

At first blush, this statement seems to ignore the distinction between an express exclusionary provision in the trust agreement itself and arbitrary and exclusionary action of the trustees in interpreting or administering the trust. As a practical matter, however, if such conduct is authorized, it is difficult to differentiate between the two since the result in both cases is exclusion of employees from the benefits of the trust. In Sturgill v. Lewis, 125 U.S.App.D.C. 335, 372 F.2d 400 (1966), the Court of Appeals of the District of Columbia said:

". . . the proceedings before the Trustees should conform to at least elemental requirements of fairness, which requirements in these circumstances normally include, in addition to notice, a hearing at which the applicant is confronted by the evidence

against him, an opportunity to present evidence in his own behalf, articulated findings and conclusions having a substantial basis in the evidence taken as a whole, and a reviewable record."

In Danti v. Lewis, 114 U.S.App.D.C. 105, 312 F.2d 345, 348 (1962), the same Court assumed jurisdiction to ascertain whether the action of the trustees of a welfare and retirement fund in denying the eligibility of a participant's application for retirement benefits, was supported by substantial evidence or was arbitrary and capricious.

[3-5] We are not certain whether the Second Circuit will interpret the jurisdiction of this Court under Section 302 as broadly as the District of Columbia Court of Appeals. We do believe, however, that a trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude from eligibility certain potential employee-beneficiaries, has a structural defect in that it fails to satisfy the requirement that the fund shall be for the sole and exclusive benefit of all the employees. A Section 302 trust fund does not fit the categories of an ordinary trust and to that extent is *sui generis* and thus requires compliance with the objectives of Section 302. Roark v. Lewis, *supra*, 401 F.2d at 427. In assuming jurisdiction for the enforcement of such a trust in accordance with Section 302, we do not do so under any broad chancery powers of the Court (*cf.*, e. g., Copra v. Suro, 236 F.2d 107 (1st Cir. 1956)), or under the theory that Section 302(e) is "the foundation stone for federal court management of trust funds." See Bowers v. Ulpiano Casal, Inc., 393 F.2d at 426. Rather, we believe that jurisdiction in a case of this kind can be found within the "penumbra

of express statutory mandate" of Section 302. See Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 457, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957).

II

[6] Assuming jurisdiction, defendants next insist that the complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The gravamen of the defendants' contention is that assuming plaintiff's allegations are true, they do not set forth a violation of Section 302. This argument is closely allied to the jurisdictional attack. In effect, defendants maintain that provisions in a trust fund which deny eligibility for retirement and disability benefits for allegedly arbitrary reasons to a substantial number of employees, do not set forth a cause of action. With this contention we cannot agree. The complaint raises serious questions of eligibility classifications and arbitrary conduct on the part of the trustees, which cannot be dismissed without evidence establishing a rational nexus or relationship between employee eligibility classifications and the trustees' conduct on one hand, and the objectives of Section 302 (c)(5) on the other hand.

If we are also to treat the defendants' application under Rule 12(b)(6) as a motion for summary judgment, it appears clear that it too must be denied because no evidence has been submitted to the Court to indicate that plaintiff's allegations concerning eligibility requirements and absence of due process are without merit.

Defendants' motion is, therefore, in all respects denied. So ordered.

APPENDIX B

Juan Sanchez LUGO, Plaintiff,

v.

The EMPLOYEES RETIREMENT FUND OF the ILLUMINATION PRODUCTS INDUSTRY et al., Defendants.

No. 73-C-663.

United States District Court,
E. D. New York.
Jan. 17, 1975.

Former employee brought action for declaratory and injunctive relief against employees' retirement fund and trustees thereof for alleged noncompliance with Labor Management Relations Act. The District Court, Bartels, J., held that the absence of a provision for a hearing on employee's application for disability benefits under retirement plan set up by agreement of contributing employers and union did not constitute a structural defect which removed retirement fund from exemption provisions of Labor Management Relations Act as not being "for the sole and exclusive benefit of the employees," where good faith provision of agreement required committee administering fund to make a bona fide determination of disability and to administer fund for sole and exclusive benefit of employees; further, eligibility requirements for standard retirement benefits were not shown to be either arbitrary, capricious or unreasonable.

Complaint dismissed.

See also D. C., 366 F.Supp. 99.

1. Labor Relations ⇐131

The district court had jurisdiction under Labor Management Relations Act

to determine whether provisions of agreement between union and employer setting up employees' retirement fund was structurally deficient in failing to provide (1) a hearing for an applicant for disability benefits on issue of his disability and (2) for vesting of rights to standard retirement benefits before retirement age. Labor Management Relations Act, 1947, § 302(c)(5), (e), 29 U.S.C.A. § 186(c)(5), (e).

2. Labor Relations ⇐46

The Labor Management Relations Act was intended to prevent employers from tampering with loyalty of union officials, and disloyal union officials from levying tribute upon employers. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

3. Labor Relations ⇐131

Fact that retirement plan to which employer agrees to contribute might indirectly further economic interest of employer by retaining experienced employees does not prevent plan from being "for the sole and exclusive benefit of the employees," exempt from provisions of Labor Management Relations Act, where plan is contained in agreement freely and openly arrived at by representatives of employers and employees. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

4. Labor Relations ⇐131

The Labor Management Relations Act does not confer a general power upon the court to interfere with the provisions of an agreement freely entered into between employer and union regulating pension coverage and eligibility. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

5. Labor Relations ⇐131

The absence of a provision for a hearing on employee's application for disability benefits under retirement plan set up by agreement of contributing employers and union did not constitute a structural defect which removed employees' retirement fund from exemption provisions of Labor Management Relations Act as not being "for the sole and exclusive benefit of the employees," where good faith provision of agreement required committee administering fund to make a bona fide determination of disability and to administer fund for sole and exclusive benefit of employees and, upon failure of committee to comply with its obligation, employees had an ample remedy in state court for committee's breach of its fiduciary obligation. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

See publication Words and Phrases for other judicial constructions and definitions.

6. Labor Relations ⇐131

It is not necessary that a retirement plan negotiated by employer and union confer equal benefits upon all employees regardless of their differences in age and periods of service, nor is it necessary for all pension plans to contain vesting provisions. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

7. Labor Relations ⇐131

Eligibility requirements for standard retirement benefits under plan set up by contributing employers and union were not arbitrary, capricious or unreasonable insofar as an applicant was required to attain age of 60 and to have been employed or available for employment by contributing employers for 90

months within 10 years prior to application. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

John C. Gray, Jr., Brooklyn Legal Services, Corporation B, Brooklyn, for plaintiff; David S. Preminger, Brooklyn, of counsel.

E. Judson Jennings, Jonathan A. Weiss, Legal Services for the Elderly Poor, New York City, of counsel.

Menagh, Trainor & Rothfeld, New York City, for defendants; Norman Rothfeld, New York City, of counsel.

BARTELS, District Judge.

Plaintiff Juan Sanchez Lugo, a former worker in the Illumination Products Industry, brings this action for declaratory and injunctive relief under § 302 of the Taft-Hartley Act ("Act"), 29 U.S.C. § 186,[1] against the Employees Retire-

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1. Section 302 of the Taft-Hartley Act, 29 U.S.C. § 186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or

group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b)(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to

ment Fund ("Fund") of that industry and the trustees thereof, upon the ground that the Fund is not in compliance with the Act. He claims that two aspects of the agreement establishing the Fund constitute structural defects in violation of the Act, to wit: the failure of the agreement to provide (1) a hearing for an applicant for disability benefits on the issue of his disability, and (2) for vesting of rights to standard retirement benefits before the retirement age insofar that an applicant is required to attain the age of 60 and to have been employed or available for employment by contributing employers for 90 months within the ten years prior to his application. In October, 1973, on defendants' motion to dismiss the complaint, the Court ruled that it has jurisdiction to determine whether the above claims constitute violations of the Act which requires that the Fund be "for the sole and exclusive benefit of the employees." 29 U.S.C. § 186(c)(5). (Lugo v. Employees Retirement Fund of the Illumi-

decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

nation Products Industry, 366 F.Supp. 99 (E.D.N.Y.1973)). On October 21, 1974, a trial was held before the Court without a jury to determine whether the agreement was, in fact, "for the sole and exclusive benefit of the employees." Accordingly, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff was continuously employed in the Illumination Products Industry from 1955 to 1972.

2. Plaintiff left his last position in the industry, at Majestic Inc., 535 Sackett Street, Brooklyn, New York, in April, 1972, because he felt he was physically unable to continue working there.

3. When he stopped working, plaintiff was 50 years old and had worked for more than 90 months within the previous ten years.

The Agreement

4. The Fund is administered by the Joint Retirement Committee ("the Committee") in accordance with the provisions of an Agreement negotiated between the representatives of contributing employers in the industry and the unions representing the workers in the industry.

5. Paragraph 5 of the Agreement provides that "The determination in *good faith* by the Committee of any matter or question under this Agreement shall be final and conclusive." (Emphasis supplied.)

6. Paragraph 18.2(b) provides that the Committee is to be the sole judge of the facts as to whether an applicant is "disabled" to the extent required for eligibility for the Disability Pension Benefit.

7. Paragraph 20(c) requires the Disability Pension application to contain a clause stating that "The Committee has the power to prescribe a medical and/or physical examination (the cost to be born by the Fund), and that the applicant will agree to such an examination before his application will be considered by the Committee."

8. Paragraph 20(a) provides that "The Committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the Committee, the Union, the Employer, or Employers."

Plaintiff's Application for Disability Benefits

9. Plaintiff duly applied for Disability Benefits on April 13, 1972, and, in addition, applied for Standard Retirement Benefits.

10. To be eligible for Disability Benefits, plaintiff was required (1) to have been employed or available for employment by contributing employers for at least 10 years and have an aggregate of 90 months employment within the 10 years immediately preceding his application (the 90/10 requirement); and (2) to be permanently incapacitated or disabled to the extent that he could no longer secure gainful employment.

11. The application contains the following statement: "The applicant agreed to submit to a medical and/or physical examination (the cost to be paid by the Fund) before this application is presented to the Trustees."

12. The reverse side of the application contains the following instruction: "Obtain a letter from Doctor describing your disability in the fullest detail possible."

13. In support of his application plaintiff submitted two letters from his physician, Emily C. Simpson, M. D. The first, dated December 23, 1971, stated that plaintiff was found to have "moderate elevation in his blood sugar" and the second, dated May 22, 1972, stated that plaintiff was being treated for "diabetes melitus" and was in "fair" condition.

14. The Pension Committee of the Electrical Industry maintains a staff of doctors at its Medical Facility, on both a full-time and retainer basis, and these doctors, among other duties, perform examinations in connection with applications for Disability Benefits under the Retirement Plan of the Illumination Products Industry.

15. On May 24, 1972, in accordance with the Fund's procedure, plaintiff was duly examined, pursuant to his disability application, by doctors at said Medical Facility.

16. After examination at the Medical Facility on May 24, 1972, a report was issued by W. T. Kriete, M. D., Medical Director of the Pension Committee, stating that plaintiff "was found to have diabetes as well as a visual disturbance which is correctable by glasses" and that he did not "consider this man disabled."

17. On September 27, 1972, after considering the letters from Dr. Simpson and the report of Dr. Kriete, the plaintiff was found to be ineligible for disability benefits.

18. Plaintiff was given no opportunity to appear in person before the Committee, nor was a hearing held where he or his attorney were able to cross-examine the Fund's doctors or to offer additional evidence of their own.

19. While plaintiff was found to have satisfied the 90/10 requirement, he

was declared ineligible for disability benefits because the Committee found that he was not in fact disabled.

Plaintiff's Application for Standard Benefits

20. To be eligible for the Standard Pension Benefit, plaintiff was required to attain the age of 60 and, in addition, meet the eligibility requirements in effect at the time he joined the industry in 1955, which required an aggregate of 90 months of employment or availability for employment by contributing employers within the 10 years immediately preceding the filing of his application.

21. Plaintiff was found to be ineligible for the Standard Pension Benefit because he had not attained the age of 60 at the time of his application.

22. The eligibility requirements of the Fund have been increased from time to time for new employees in the industry so that at present, in order to be eligible for the Standard Retirement Benefit, an employee must attain the age of 60 and have been employed or available for employment by contributing employers for 200 months within the 20 years prior to his application.

23. The above requirements are provided primarily for actuarial soundness.

24. Of the 100 largest retirement plans in 1971, 90 had some type of vesting provision whereby a participant acquired rights at certain specified times, as the case may be, in accrued benefits before reaching the retirement age. Sixty-nine of these 90 had a type of deferred vesting whereby the participant would not receive payment until a certain age was reached, and only 17 of the 90 provided for immediate vesting upon termination of participation in the plan.

25. The Retirement Fund of the Illumination Products Industry does not provide for any such vesting and a participant who ceases participation prior to meeting the requirements, has no rights in the Fund.

26. The fact that many of the 100 largest retirement funds provide for vesting in one form or another has, without more, no bearing on the reasonableness or rationality of the structure of the Fund at issue.

CONCLUSIONS OF LAW

[1] 1. The Court has jurisdiction under § 302(e) of the Act to determine whether the provisions of the Agreement here challenged constitute structural defects in violation of § 302(c)(5) of the Act. Lugo v. Employees Retirement Fund of the Illumination Products Industry, *supra*.

[2, 3] 2. The Act was intended "to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers." United States v. Ryan, 225 F.2d 417, 426 (2d Cir. 1955), (L. Hand, C. J., dissenting), rev'd, 350 U.S. 299, 76 S.Ct. 400, 100 L.Ed. 335 (1956), and Courts must keep this purpose in mind in interpreting the literal language of the Act. "There is no surer guide in the interpretation of a statute than its purpose when that is sufficiently disclosed; nor any surer mark of over solicitude for the letter than to wince at carrying out that purpose because the words used do not formally quite match with it." Federal Deposit Ins. Corp. v. Tremaine, 133 F.2d 827, 830 (2d Cir. 1943), (L. Hand, C. J.). Thus, the fact that the plan to which the employer agrees to contribute might indirectly further the

economic interest of the employer by retaining experienced employees, does not prevent it from being "for the sole and exclusive benefit of the employees," where the plan is contained in an agreement freely and openly arrived at by representatives of the employers and employees. Roark v. Boyle, 141 U.S.App. D.C. 390, 439 F.2d 497, 505 (1970).

[4] 3. The Act does not confer a general power upon the Court to interfere with the provisions of an agreement freely entered into between the Union and the employers regulating pension coverage and eligibility. Moglia v. Geoghegan, 267 F.Supp. 641 (S.D.N.Y. 1967), affirmed, 403 F.2d 110 (2d Cir. 1968), cert. denied, 394 U.S. 919, 89 S. Ct. 1193, 22 L.Ed.2d 453 (1969).

[5] 4. The absence of a provision for a hearing on plaintiff's application for disability benefits does not constitute a structural defect converting the Fund into one not "for the sole and exclusive benefit of the employees." In this respect the employees are protected from possible disloyalty of the officials administering the Fund by the "good faith" requirement of Paragraph 5 of the Agreement, which requires the Committee to make a *bona fide* determination of disability and to administer the Fund for the sole and exclusive benefit of the employees. Upon the failure of the Committee to comply with this obligation, the employees have ample remedy in the state courts for the Committee's breach of its fiduciary obligation. *Cf.* Insley v. Joyce, 330 F.Supp. 1228, 1234 (N.D.Ill.1971); Bowers v. Ulpiano Casal, Inc., 393 F.2d 421 (1st Cir. 1968); Giordani v. Hoffmann, 295 F.Supp. 463 (E.D.Pa.1969); Porter v. Teamsters, etc., Funds, 321 F.Supp. 101 (E.D.Pa. 1970).

[6] 5. Plaintiff's challenge to the requirements for Standard Retirement Benefits is essentially a challenge to the failure of the pension plan to provide for vesting of rights prior to the age of 60. Plaintiff having retired at the age of 50, will not be eligible for a pension when he reaches the age of 60 since he will not have met the 90/10 requirement. The essence of his complaint on this score is that he is denied benefits which others with equal periods of service who have reached the age of 60 will receive. It is not necessary that a plan confer equal benefits upon all employees regardless of their differences in age and periods of service. Nor is it necessary for all pension plans to contain vesting provisions. See Roark v. Boyle, *supra*, 439 F.2d at 504–507.[2]

[7] 6. The Fund's eligibility requirements for Standard Retirement Benefits have not been shown to be either arbitrary, capricious or unreasonable. Insley v. Joyce, *supra*, 330 F.Supp. at 1233. On the contrary, they appear to be designed in good faith to provide for the actuarial soundness of the Fund.

7. For the reasons stated above, we find that plaintiff has failed to establish any structural defects in the Fund constituting violations of the Act.

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2. The recent enactment of the Pension Reform Act (The Employee Retirement Income Security Act of 1974), P.L. 93–406, which now requires vesting provisions in pension plans, and the long legislative history leading up to its enactment, offer ample evidence that Congress never viewed § 302 of the Taft-Hartley Act as requiring vesting provisions in pension plans. See Roark v. Boyle, *supra*, 439 F.2d at 504–507.

8. Since the claims constituting the basis for Federal Court jurisdiction are found to be without merit, the Court declines to take pendant jurisdiction over plaintiff's claims under state law.

Complaint dismissed. So ordered.

APPENDIX C

Juan Sanchez I UGO,
Plaintiff-Appellant,

v.

The EMPLOYEES RETIREMENT FUND OF the ILLUMINATION PRODUCTS INDUSTRY, et al., Defendants-Appellees.

No. 150, Docket 75-7128.

United States Court of Appeals,
Second Circuit.

Argued Nov. 13, 1975.

Decided Jan. 14, 1976.

Plaintiff, a former employee, brought action for declaratory and injunctive relief against employees' retirement fund and trustees thereof for alleged noncompliance with Labor Management Relations Act when fund denied benefits. The United States District Court for the Eastern District of New York, John R. Bartels, J., dismissed the complaint, 388 F.Supp. 997, and plaintiff appealed. The Court of Appeals, Feinberg, Circuit Judge, held that district court had jurisdiction on plaintiff's claim for standard and disability retirement benefits against employees' retirement fund to determine whether the "sole and exclusive benefit" requirement of governing statute had been met; that decision made by employees' retirement fund denying disability benefits was not wanting in procedural fairness; and that plaintiff who had not reached age 60 was not, under regulation of employees' retirement fund, entitled to receive a retirement pension and thus issue as to validity as applied to plaintiff, of-

so-called 90/10 rule of pension fund, which imposed minimum work requirement of 90 months of employment in ten years before application, was not ripe for adjudication.

Judgment affirmed.

1. Labor Relations ⇐131

District court had jurisdiction on plaintiff's claim for standard and disability retirement benefits against employees' retirement fund to determine whether the "sole and exclusive benefit" requirement of governing statute had been met. Labor Management Relations Act, 1947, § 302(c)(5), (e), 29 U.S.C.A. § 186(c)(5), (e).

2. Labor Relations ⇐131

Decision made by employees' retirement fund denying disability benefits was not wanting in procedural fairness, even though fund relied only on written medical reports, where employee at no time requested a personal appearance before trustees considering his disability claim and there was no showing that more formal and elaborate procedures might have brought about a different result. Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5).

3. Labor Relations ⇐131

Employee who had not reached age 60 was not, under regulation of employees' retirement fund, entitled to receive a retirement pension and thus issue as to validity, as applied to employee, of so-called 90/10 rule of pension fund, which imposed minimum work requirement of 90 months of employment in ten years before application, was not ripe for adjudication. Labor management Relations

Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186 (c)(5).

David S. Preminger, New York City (Legal Services for the Elderly Poor, John C. Gray, Brooklyn Legal Services, Corporation B, Brooklyn, N.Y., on the brief), for appellant.

Norman Rothfeld, New York City (Menagh, Trainor & Rothfeld, New York City, on the brief), for appellees.

Before FEINBERG, GURFEIN and VAN GRAAFEILAND, Circuit Judges.

FEINBERG, Circuit Judge:

Plaintiff Juan Sanchez Lugo appeals from a judgment of the United States District Court for the Eastern District of New York, John R. Bartels, *J.*, dismissing his complaint against The Employees Retirement Fund of the Illumination Products Industry and the individual trustees of the Fund. After a bench trial, the judge held that Lugo had failed to establish that the Fund, when it denied his claim for a pension, was in violation of section 302(c)(5) of the Taft-Hartley Act, 29 U.S.C. § 186(c)(5).[1] We affirm the judgment of the district court.

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1. 29 U.S.C. § 186 provides:

(a) It shall be unlawful for any employer . . . to pay . . . any money or other thing of value—

(1) to any representative of any of his employees . . .

. . . . . .

(c) The provisions of this section shall not be applicable . . .

(5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents . . . ; Provided, That (A) such payments are held in trust for the purpose of paying . . . for the benefit of employees, . . . for medical or hospital care, pensions on retirement or death . . . , compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund . . . , and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities . . .

I

Background

In April 1972, appellant had been continuously employed in the industry and a member of the International Brotherhood of Electrical Workers Union, Local No. 3, for over 16 years, and was a participant in the defendant Fund. Appellant, who was 49 at the time, felt he was physically unable to continue working at his job in the industry and applied for a disability pension. Lugo's application stated that he was "diabetic" and identified his physician as Dr. Simpson. With the application appellant apparently submitted a letter from the doctor, dated December 23, 1971, which stated:

To whom it may concern:

Mr. Sanchez [Lugo] is a patient at this office. He was found to have moderate elevation in his blood sugar.

An additional letter from the doctor, dated May 22, 1972, in support of the application, stated:

To whom it may concern:
The above named patient is being treated at this office for Diabetes Mellitus.
He is on oral hypoglycerine medications.
His condition is fair.

In May 1972, appellant was examined by physicians retained by the Fund and given various tests. Dr. W. T. Kriete, Medical Director of the Fund's Pension Committee, then reported that appellant "was found to have diabetes as well as a visual disturbance which is correctable by glasses. I do not consider this man disabled." At a meeting of the Fund's Pension Committee in September 1972, at which the results of the tests and the other written material were considered, appellant's application for a disability pension was denied on the ground that he was not in fact disabled.[2] Lugo was not given an opportunity to appear in person before the Committee.

Appellant claims that at about the same time, he also applied for standard pension benefits, which, under the labor agreement governing the Fund, would not ordinarily be available until age 60. Defendants say that no such formal application was ever made.

In May 1973, appellant filed his complaint in the district court, claiming that

2. Lugo had also applied in April 1972 for social security disability benefits. The application was denied after Lugo had been examined by two physicians and this decision was upheld by an Administrative Law Judge after a hearing. In December 1973, the Appeals Council of the Department of Health, Education, and Welfare approved the decision of the Administrative Law Judge.

defendants' refusal to award him disability or retirement benefits was unlawful. As to the former, the basis of the claim was the absence of proper procedures. As to the standard retirement benefits, plaintiff argued that the minimum work requirement of 90 months of employment in the 10 years before the application (the 90/10 rule) was arbitrary and unreasonable. The relief sought was a declaratory judgment, an order either requiring defendants to grant the application for disability or standard retirement benefits or requiring them to accord him full hearing procedures, and $25,000 damages. In October 1973, Judge Bartels denied defendants' motion to dismiss the complaint, holding that the district court had jurisdiction under section 302(e) of the Taft-Hartley Act, 29 U.S.C. § 186(e),[3] because plaintiff claimed that the Fund was not one "for the sole and exclusive benefit of the employees." The judge also held that the complaint stated a claim upon which relief could be granted. 366 F.Supp. 99 (E.D.N.Y.).

After a non-jury trial in October 1974, the judge found for defendants. Regarding the claim for disability benefits, the judge held that "The absence of a provision for a hearing" was not a structural defect because

> employees are protected from possible disloyalty of the officials administer-

3. 29 U.S.C. § 186(e) provides:
> The district courts of the United States . . . shall have jurisdiction . . . to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of section 101–115 of this title.

The statutes referred to are provisions of the Clayton Act and Norris-LaGuardia Act restricting injunctive relief in labor disputes.

ing the Fund by the "good faith" requirement of . . . . the Agreement, which requires . . . a *bona fide* determination of disability.[4]

As to the denial of standard retirement benefits, the judge viewed plaintiff's case as

> essentially a challenge to the failure of the pension plan to provide for vesting of rights prior to the age of 60. Plaintiff having retired at the age of 50, will not be eligible for a pension when he reaches the age of 60 since he will not have met the 90/10 requirement. The essence of his complaint on this score is that he is denied benefits which others with equal periods of service who have reached the age of 60 will receive. It is not necessary that a plan confer equal benefits upon all employees regardless of their differences in age and periods of service. Nor is it necessary for all pension plans to contain vesting provisions.

Finding that the eligibility requirements were "designed in good faith to provide for the actuarial soundness of the Fund" the judge held that plaintiff's claims were without merit.

On appeal, plaintiff argues essentially as he did in the district court. In addition, plaintiff claims that Judge Bartels erred in excluding evidence plaintiff offered at trial to show that the 90/10 rule

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4. The reference was to ¶ 5 of the agreement, which provides:

> The determination in good faith by the Committee of any matter or question under this agreement shall be final and conclusive.

was not necessary to preserve the fiscal integrity of the Fund. Defendants renew their contention that the federal courts lack jurisdiction over this suit. They also deny that plaintiff was deprived of any rights by the Fund's procedures and contend that he lacks standing to sue for standard pension benefits. We turn now to the arguments of the parties.

II

Jurisdiction

Plaintiff argues that federal jurisdiction exists under section 302(e) of the Taft-Hartley Act, see note 3 supra, because that section authorizes suits for violations of section 302, and this is such a suit. His theory is that section 302(c)(5), see note 1 supra, requires the Fund to be "established . . . for the sole and exclusive benefit of the employees," and that the challenged provisions of the Fund are so arbitrary and unreasonable that no plan containing them can be considered to fit that description.

Section 302(e) has been the focus of considerable litigation, and several controversies about its meaning have developed. One question which receives considerable attention in the briefs in this case is whether section 302(e) confers jurisdiction "over all cases pertaining to § 302 pension plans," as plaintiff contends,[5] or whether there is

> a distinction between actions involving "structural" deficiencies in the rele-

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5. Appellant's reply brief, at 5.

vant trust which cause it to violate the "sole and exclusive benefit" provision of § 302(c)(5) and actions involving only questions of day-to-day fiduciary administration of welfare and pension funds.

Alvares v. Erickson, 514 F.2d 156, 165 (9th Cir. 1975), *cert. denied*, —— U.S. ——, 96 S.Ct. 143, 46 L.Ed.2d 106 (1975). See also *deLoraine v. MEBA Pension Trust*, 499 F.2d 49, 51 n. 9 (2d Cir. 1974). Support for the broad view of section 302(e) can be found in a number of cases.[6] Other courts, however, notably the First Circuit in *Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421 (1st Cir. 1968), have concluded that section 302(e) only gives jurisdiction to restrain violations of the basic structure provided by Congress for section 302 pension funds,[7] "not violations of fiduciary obligations or standards of prudence in the administration of the trust fund." *Id.* at 424.[8]

By our decision in *Cuff v. Gleason*, 515 F.2d 127 (2d Cir. 1975), we joined the courts that have taken a narrow view of the scope of section 302(e). In that case, we regarded the question as "whether

6. *Copra v. Suro*, 236 F.2d 107, 114–16 (1st Cir. 1956). See also cases discussed in *Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421, 424 n.3 (1st Cir. 1968).

7. For examples of "structural violations" other than those involving the "sole and exclusive benefit" provision, see *Bowers v. Ulpiano Casal, Inc.*, supra note 6, 393 F.2d at 424 n.4.

8. See, e. g., *Employing Plasterer's Ass'n of Chicago v. Journeymen Plasterers' Protective & Benevolent Soc'y of Chicago, Local No. 5*, 279 F.2d 92, 97 (7th Cir. 1960). See also cases collected in *Alvares v. Erickson*, 514 F.2d 156, 164–65 (9th Cir. 1975), cert. denied, —— U.S. ——, 96 S.Ct. 143, 46 L.Ed.2d 106 (1975).

the application of rules of a jointly-administered pension trust to an individual claim was arbitrary and capricious." *Id.* at 128. We held that federal jurisdiction is lacking "where an application of a trust pension plan . . . . was involved and the specific requirements of § 302(c)(5) are met." *Id.* See also *Beam v. International Organization of Masters, Mates and Pilots*, 511 F.2d 975, 978–79 (2d Cir. 1975). This does not dispose of our case, however, since Lugo is challenging not the application of the provisions of the trust in his particular case, but the provisions themselves, which he claims violate section 302(c)(5). In this case, unlike *Cuff*, the very issue raised is whether the requirements of section 302(c)(5) are met.

Defendants however, argue in effect that claims such as those made in this case are not claims of "structural deficiencies" in the pension plan. According to defendants, the "sole and exclusive benefit" language means only that the trust funds must not grant benefits to anyone *other than* employees.[9] Plaintiff argues, on the other hand, that the quoted language, coupled with the jurisdictional grant in section 302(e), confers on the federal courts the power to create a federal common law governing the management of pension plans. *Cf. Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957). We have considerable doubt about this proposition. The length and detail of the Employee Retirement Income Security Act (ERI

9. Appellees' brief, at 6–7.

SA), 29 U.S.C. § 1001 et seq., indicate that the regulation of pension funds with regard to such matters as vesting and procedural rights is a complex task more appropriate for Congress than for the courts. The careful attention paid by Congress in that recently enacted statute to the problem of effective dates and coverage [10] makes us hesitate to conclude that the courts have long been authorized, via the fifth exception to a criminal statute, see note 1, supra, to create obligations similar to those of ERISA.

[1] However this dispute is to be resolved, it seems to us that the controversy is not about the jurisdictional provisions of section 302(e), but about the proper interpretation of the substantive requirements of section 302(c)(5). As the Supreme Court made clear in *Bell v. Hood*, 327 U.S. 678, 682, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946):

> Jurisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover.

In this case, Judge Bartels correctly analyzed the true scope of the jurisdictional inquiry when he said with reference to plaintiff's claim for standard retirement benefits:

> Plaintiff having alleged that the trust fund is not "for the sole and exclusive benefit of the employees" by reason of the exclusive eligibility requirements, the Court has jurisdiction to determine whether the trust agreement in fact

10. See 29 U.S.C. §§ 1003, 1031, 1051, 1055(f), 1061, 1081, 1086, 1101, 1114, 1144(a), 1381.

> satisfies the statutory standards of Section 302 . . .

366 F.Supp. at 102. The same analysis applies to the claim for a disability pension. Plaintiff argues that a trust fund authorizing the trustees to act arbitrarily and capriciously in determining claims without extending certain procedural protections fails to satisfy the "sole and exclusive benefit" requirement of section 302(c)(5). It is not necessary for us, at this stage, to agree with plaintiff's interpretation of that requirement in order to have jurisdiction to decide the case; so long as plaintiff's claim that the section has been violated is not "wholly insubstantial and frivolous," *Bell v. Hood, supra*, 327 U.S. at 682–83, 66 S.Ct. 773, jurisdiction exists.

III

The Merits

As we have already indicated, plaintiff's theory of the scope of section 302(c)(5) raises difficult questions. It is not necessary for us to decide whether that interpretation is correct, however, because plaintiff's claims to both disability benefits and standard retirement benefits must be dismissed even if his liberal interpretation of section 302(c)(5) is correct.

Disability benefits

Lugo argues that before his claim to disability benefits could be denied, he was entitled to such procedural safeguards as notice of the meeting at which the decision was to be made, a hearing at which he would be confronted with the evidence against his claim and entitled to present evidence of his own and cross-examine witnesses against him, and a decision by the trustees containing ar-

ticulated findings and conclusions. *Cf. Sturgill v. Lewis*, 125 U.S.App.D.C. 335, 372 F.2d 400, 401 (D.C. Cir. 1966). The failure of the pension plan to provide such protections is the defect that allegedly violates section 302(c)(5).

[2] We do not believe that the decision made by the Fund was wanting in procedural fairness. In support of his disability application, Lugo only submitted two letters from his doctor, which did not contend that he was disabled. They stated merely that plaintiff had a "moderate elevation in his blood sugar," that he was being treated for diabetes with an identified medication, and that his condition was "fair." Plaintiff submitted no further information in support of his application, although he obviously knew that he could.[11] Lugo was extensively examined by the Fund's doctors, who concluded that he was not disabled. The record before Judge Bartels included a letter from Dr. Kriete, describing the results of various tests performed in May 1972 by the Fund's doctors in examining plaintiff, and explaining the basis of his prior recommendation against a finding of disability. Before Judge Bartels, plaintiff offered no further medical proof nor did he indicate what evidence he might offer at a further hearing by the Fund. Finally, at no time had plaintiff requested a personal appearance before the trustees considering his disability claim.

11. The second letter from plaintiff's doctor is dated six weeks after his formal application and therefore must have been submitted at a later date.

Under these circumstances, we simply do not think it is necessary to examine the merits of plaintiff's argument that the Fund's procedures were so wanting in elements of fair play as to amount to a structural defect. We do not see how the Fund could be found at fault for dismissing plaintiff's application without the full procedures plaintiff now seeks. There has been no showing that more formal and elaborate procedures might have brought about a different result. At least when an applicant's claim of disability is this weak, reliance on written medical reports could not be a violation of section 302(c)(5). Cf. *Richardson v. Perales*, 402 U.S. 389, 402–06, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971).

Retirement benefits

We turn now to plaintiff's claim regarding standard retirement benefits. At the trial below, Judge Bartels initially indicated that he found this claim unripe, and for that reason excluded certain evidence offered by plaintiff relating to it. In his final decision, however, the judge disposed of the claim on the merits, ruling that the regulation challenged by plaintiff was reasonable and not a violation of the Taft-Hartley Act. We believe the judge's initial reaction was correct and that the dispute between Lugo and the Fund is not ripe for adjudication.

Plaintiff attacks the provision of the plan that requires an applicant for standard retirement benefits to have worked 90 months in the industry within the 10 years immediately preceding his application in order to be eligible. According to plaintiff, this rule is arbitrary and unreasonable because it excludes some employees from benefits while extending benefits to others who have worked an equal or lesser time in the industry, cf.

Roark v. Lewis, 130 U.S.App.D.C. 360, 401 F.2d 425 (D.C. Cir. 1968), and because in Lugo's case it takes away benefits already earned because of an occurrence beyond the control of the worker, namely, disability. Cf. *Lee v. Nesbitt*, 453 F.2d 1309 (9th Cir. 1971).[12]

There is, however, another rule of eligibility which excludes Lugo. Before an employee can apply for a standard retirement pension, he must have reached age 60. The plaintiff specifically stated at trial, on more than one occasion, that he does not challenge the validity of this rule. Lugo was about 49 when he allegedly applied for pension benefits,[13] and is only 53 now. He is thus not entitled to receive a retirement pension for a reason entirely independent of the 90/10 rule he seeks to challenge.

We believe that this case, in which plaintiff argues that a regulation that might affect him at some future time is invalid because it conflicts with a federal statute, may usefully be analogized to a challenge to an administrative regulation on the ground that it conflicts with statutory or constitutional provisions. After a lengthy discussion of the Supreme Court's decisions regarding the ripeness for adjudication of such challenges, Professor Davis concludes that "An issue is normally ripe for judicial determination when interests of the plaintiff are in fact subjected to or imminently threatened with substantial injury." 3 Davis, Administrative Law Treatise § 21.10, at 200 (1958), and at 700 (Supp.1970). See *Abbott Laboratories v. Gardner*, 387 U.S. 136, 152, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). This test essentially restates in more concrete terms the standard for declaratory judgments announced by the Supreme Court in *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941), and restated as recently as *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 506, 92 S.Ct. 1749, 1755, 32 L.Ed.2d 257 (1972):

> Basically, the question in each case is whether . . . . there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

We do not believe that Lugo can meet this test. The possibility, or even, if such it is, the certainty that the Fund will invoke the 90/10 rule that Lugo claims is illegal to deny his application for a retirement pension at age 60 causes him no injury now, nor is he imminently threatened with such injury. The interest he asks us to defend has little "immediacy and reality."

Of course, there are situations in which a case may be ripe for declaratory relief before the challenged regulation is actually applied. As Professor Davis puts it, "Resolving a debilitating legal uncertainty is a legitimate judicial function . . . . whenever the continued uncertainty causes substantial harm. . . . ." *Davis, supra*, at 203. An ex-

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12. We note in passing that this aspect of the claim must fall in any event, since on this record there is no persuasive reason to believe that Lugo was disabled.

13. There is no evidence in the record that Lugo ever made formal application for a standard retirement pension, and the attorneys for the parties disagree as to whether there was a stipulation that he was to be deemed to have so applied.

ample is our recent decision in *Begins v. Philbrook*, 513 F.2d 19 (2d Cir. 1975), where we held justiciable a challenge to a state welfare regulation making ineligible any family owning two cars, even though at the time of the suit the plaintiffs owned only one car, because the plaintiffs alleged a need for two cars.[14] In that case, where plaintiffs were "threatened with loss of benefits if they again purchased a second car," we noted that.

> plaintiffs are now subject to the very prohibition which they seek to challenge, and their allegations suggest not some subjective fear, but rather assert both "present objective harm" and the "threat of specific future harm." *Lecci v. Cahn*, 493 F.2d 826, 829 (2d Cir. 1974).

513 F.2d at 23. In this case, Lugo does not allege that uncertainty as to whether he will be eligible for a pension at age 60 has any effect on his present behavior or condition. Cf. also *Abbott Laboratories v. Gardner*, *supra*, 387 U.S. at 152–54, 87 S.Ct. 1507.

[3] It is possible that plaintiff's complaint could be read as a challenge not to the 90/10 rule in isolation, but to the interaction of that rule with the rule making 60 the minimum age for application.[15] Indeed, part of the relief demanded by plaintiff in his complaint was an injunction ordering the Fund to "grant the plaintiff's application for . . . retirement benefits." If the complaint is so interpreted, plaintiff could argue that he has a present and not a future claim. However, plaintiff specifically disclaimed at trial any attack on the 60-year rule, and both the complaint and the record show that insofar as plaintiff does attack the combination of the two rules, rather than the 90/10 rule alone, he argues only that their interaction prevents early vesting of pension rights, which would be payable at some later date, not that they prevent him from getting his pension payments now.[16] Thus, no matter how we reasonably view the plaintiff's claim to a standard retirement pension, it is at best a claim that when, seven years from now, plaintiff is old enough to be entitled to apply for such benefits, the trustees will deny his application on the basis of the 90/10 rule, which he claims is illegal. Such a claim is not ripe for adjudication.

A number of other considerations lend support to this view. There is no factual dispute that needs to be resolved immediately because memories of the relevant transaction might dim or because witnesses might become unavailable or die; the dispute concerns only the legality of one of the Fund's regulations. Moreover, this case is not like an ordinary contract claim, where a plaintiff may argue that defendant's indication that it will not pay benefits is an anticipatory

14. Plaintiffs' child had "serious coronary and respiratory problems and often need[ed] immediate medical attention," necessitating an available car at home, while one of the plaintiffs, a construction worker in northern Vermont, needed a car to look for and commute to work over a large area.

15. Indeed, when Lugo ceased work in 1972, he had apparently worked for 90 months in the last 10 years, and thus if the age requirement for a standard pension had been 50 instead of 60, he would have satisfied all the requirements for eligibility.

16. This is how Judge Bartels interpreted this aspect of plaintiff's case.

breach, giving rise to an immediate cause of action.[17] In addition, Lugo's claim to retirement benefits seems to have been something of an afterthought. While the record of his attempts to get disability benefits is quite complete, the record with respect to this claim is quite bare. Indeed, as indicated in note 13 supra, there is even some dispute as to whether he ever applied for a retirement pension. Also, as indicated above, the impact of ERISA prior to the time Lugo reaches age 60 will undoubtedly be considerable.[18] To embark on a lengthy analysis of the meaning, in this context, of "sole and exclusive benefit" in section 302(c)(5) would seem unwise unless necessary to protect plaintiff against immediate harm.

Accordingly, we find that the district court did have jurisdiction to determine

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17. These two considerations serve to distinguish *Bird v. Computer Technology, Inc.*, 364 F.Supp. 1336 (S.D.N.Y.1973), in which two executives, who had been induced to leave one corporation for another's employ by the promise of lucrative retirement benefits, were awarded a declaratory judgment that they had a right to those benefits many years before payment would actually become due. In that case, however, the parties disputed their obligations under a contract, and parol evidence was received concerning the intention of the parties. There was thus an important reason for resolving the dispute immediately, while memories of the relevant transactions were relatively fresh, rather than some time in the future, when memories might be blurred, witnesses deceased and documents lost. Moreover, the plaintiff in *Bird* claimed anticipatory breach of contract.

18. Indeed, defendants claim that under ERISA plaintiff's situation may change, although this is disputed by plaintiff.

whether the challenged aspects of the pension plan violated section 302(c)(5); that at least as applied to plaintiff, the claimed lack of procedural due process in determining applications for disability benefits does not violate that section; and that plaintiff's attack on the 90/10 rule, which may prevent him from receiving a standard retirement pension at some point in the future, is not ripe for adjudication. We therefore affirm the judgment of the district court dismissing plaintiff's complaint.

APPENDIX D

[4] * * *

MR. PREMINGER: Basically two issues are before the Court, your Honor: The first is whether or not the plaintiff, who is a participant in the defendant's retirement fund, the Taft-Hartley Pension, was, upon his application for disability pension from that fund, entitled to due process in order to determine his eligibility for disability pension.

The stipulation of facts which is set forth in the pretrial order already before the Court includes all the facts necessary to place this issue before the Court.

* * *

[16] * * *

[THE COURT] Now, let's see what Mr. Rothfeld has to say.

MR. ROTHFELD: Your Honor, our position is, very briefly, that unless the defendant -- I'm sorry, unless the plaintiff is found to have been disabled within the meaning of the trust agreement, he is not entitled to any remedies at all.

THE COURT: You see -- you and I discussed that at pretrial, too.

MR. ROTHFELD: I understand that, your Honor.

THE COURT: I think I took the position that you had the cart before the horse; [17] that the question was whether the eligibility requirements of this trust fund were such that it excluded large numbers of employees without any reason for it and, therefore, it was in violation of, I think, Section 305 --

MR. ROTHFELD: 302C5.

THE COURT: You keep coming back

as to whether this plaintiff was injured and that sort of thing. I don't know that this is the issue here. You will not go into the broad scope of your trust agreement and you seem to think as if the plaintiff was not disabled, that this Court has no jurisdiction.

Well, you are wrong on that.

* * *

* * *

[19] [THE COURT:] Suppose he is not injured, suppose he is not disabled, Mr. Preminger? Has he got any standing?

MR. PREMINGER: With respect to which claim, your Honor.

THE COURT: Any claim.

MR. PREMINGER: If he is not disabled?

THE COURT: Yes.

MR. PREMINGER: Yes, your Honor.

THE COURT: What's the standing he has?

MR. PREMINGER: With respect to the claim for a hearing on the issue of disability, he is definitely entitled to the hearing once he puts in an application for a disability pension. He is a beneficiary --

THE COURT: Suppose he is absolutely well and healthy, just as healthy as you are, [20] puts in a claim for disability, do you still think he has a right to a hearing in this case? That's not the situation here but I would take the position --

THE COURT: That's a hypothetical question.

Well, then what you say in effect is the mere lack of due process in this trust pension fund is a structural defect in violation of Section 302C5 of the Taft-Hartley Act; is

that right?

MR. PREMINGER: That is correct.

THE COURT: That's really your main contention, I suppose, not necessarily, but certainly not yet entitled to any retirement benefits.

MR. PREMINGER: No, we didn't make that claim, your Honor.

THE COURT: So, we have to assume his request is predicated upon the fact he is disabled and under the agreement he was not given due process and because he wasn't, somehow or other, this lack of due process violates the Taft-Hartley Act.

* * *

APPENDIX E

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-six day of February, one thousand nine hundred and seventy-six

Present:

HON. WILFRED FEINBERG,
HON. MURRAY I. GURFEIN,
HON. ELLSWORTH VANGRAAFEILAND,

Circuit Judges.

JUAN SANCHEZ LUGO,
Appellant

v.

Docket No.
75-7128

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, etc.,
Appellee

A petition for a rehearing having been filed herein by counsel for the appellant, Juan Sanchez Lugo,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

/s/ A. Daniel Fusaro

A. DANIEL FUSARO,
Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-sixth day of February, one thousand nine hundred and seventy-sixth.

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JUAN SANCHEZ LUGO,

Appellant

v. Docket No. 75-7128

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, etc.,

Appellee

----------x

A petition for rehearing containing a

suggestion that the action be reheard in banc having been filed herein by counsel for the appellant, Juan Sanchez Lugo, and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

/s/ Irving R. Kaufman
IRVING R. KAUFMAN
Chief Judge

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1708

JUAN SANCHEZ LUGO,

Petitioner,

against

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL, II, EDWARD R. MURPHY, JERRY SCHNEIT, ROWLAND J. SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO, STEPHEN KANYOOSKY, KAREL MRNKA, JOHN [illegible]IACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

DONALD F. MENAGH
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Of Counsel
NORMAN ROTHFELD
MENAGH, TRAINOR & ROTHFELD

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. .....

JUAN SANCHEZ LUGO,

Petitioner,

against

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

The question involved is whether Section 302(c)(5) of the Taft-Hartley Law required that Petitioner, an applicant for disability pension, be offered a hearing after Respondents' medical examiners reported that he was not disabled. The Second Circuit examined the merits of Petitioner's claim and affirmed the District Court's determination that Respondents' failure to offer Petitioner a hearing did not deprive him of any rights.

Section 302 was enacted "to remove the corruptive influence of side payments" to union officers and other per-

sons. (See Petition, A-7, footnote 2.) Section 302(c)(5) provides that Respondents' Retirement Fund be operated "for the sole and exclusive benefit of the employees . . ." (Petition, page 4). Respondents contested the jurisdiction of the Federal Courts and urged that this quoted language required only that the Respondents' Retirement Fund make no payments to anyone *other than* employees. (Petition, A-36) The Second Circuit stopped short of expressly adopting Respondents' interpretation of this provision, but rejected Petitioner's contention that Section 302 confers on the Federal Courts the power to create a federal common law governing the management of pension plans, (Petition, A-36)

The Petitioner urges (Petition, page 12) that certiorari be granted because the pension plans referred to in Section 302(c)(5) cover millions of employees and manage billions of dollars. The Petitioner ignores the fact that all of these pension plans now are strictly regulated by the U. S. Department of Labor and by the Internal Revenue Service pursuant to provisions of the Employee Retirement Income Security Act of 1974 (ERISA). As the Second Circuit noted, Congress paid careful attention in ERISA to procedural rights (Petition, A-36-37). The Petitioner's application for disability pension preceded the enactment of ERISA.

The Petitioner implies (Petition, pp. 13-14) that the Second Circuit's decision actually conflicts with the decision of the District of Columbia Circuit in *Sturgill* v. *Lewis,* 372 F.2d 400 (D.C. Cir. 1966). The Court's statement in *Sturgill* that a participant is entitled to a due process hearing was mere dictum. The applicable law in the District of Columbia Circuit is that a District Court's duty is to determine whether the material before the pension trustees sufficed to support their decision. *Danti* v. *Lewis,* 312 F.2d 345 (D.C. Cir. 1962) Moreover, *Sturgill* does not discuss the underlying jurisdictional problem,

and is inapposite with respect to the jurisdictional problem since the Federal Courts are the only courts in the District of Columbia. There is therefore no actual conflict between the Circuits.

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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